

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JOSHUA CUEVAS,

Plaintiff,

v.

LA FAMILIA MARKET, LLC, *et al.*,

Defendants.

Case No. 1:24-cv-01448-CDB

FINDINGS AND RECOMMENDATIONS
TO DISMISS ACTION WITHOUT
PREJUDICE FOR PLAINTIFF'S
FAILURE TO PROSECUTE AND OBEY
A COURT ORDER

(Doc. 6)

14-DAY DEADLINE

Clerk of the Court to Assign District Judge

Background

On November 26, 2024, Plaintiff Joshua Cuevas ("Plaintiff") initiated this action against Defendants La Familia Market, LLC and Abdo Fatah Alammari ("Defendants"). (Doc. 1). The complaint asserts claims for injunctive relief under the Americans with Disabilities Act of 1990 ("ADA"), a claim for statutory damages under California's Unruh Civil Rights Act ("Unruh Act"), California Civil Code §§ 51-53, and related state law causes of action. (*Id.*). These claims stem from alleged barriers Plaintiff encountered while visiting a grocery store business establishment owned, operated, or leased by Defendants. (*Id.* at 2, 4). No Defendant has appeared.

On November 27, 2024, the undersigned ordered Plaintiff "to show cause, in writing, no

1 later than December 12, 2024, why the Court should not decline to exercise supplemental
 2 jurisdiction over Plaintiff's Unruh Act claim" in light of the Ninth Circuit's decision in *Vo v.*
 3 *Choi*. (Doc. 5) (emphasis in original); *Vo v. Choi*, 49 F.4th 1167 (9th Cir. 2022) (affirming a
 4 district court's decision to decline supplemental jurisdiction over an Unruh Act claim); *see* 28
 5 U.S.C. § 1367(c). Plaintiff was cautioned that any failure to respond may result in a
 6 recommendation to dismiss of the entire action without prejudice. (Doc. 5 at 3); Fed. R. Civ. P.
 7 41(b) (stating that dismissal is warranted "[i]f the plaintiff fails to ... comply with ... a court
 8 order."); *see Hells Canyon Pres. Council v. U.S. Forest Serv.*, 403 F.3d 683, 689 (9th Cir. 2005).
 9 Plaintiff was further cautioned that an inadequate response will result in the Court recommending
 10 that supplemental jurisdiction over Plaintiff's Unruh Act claim be declined and that the Unruh
 11 claim be dismissed pursuant to 28 U.S.C. § 1367(c). (Doc. 5 at 3).

12 Plaintiff failed to file a response to the Court's show cause order and the time do so has
 13 expired. For the reasons given below, the undersigned will recommend that the Court dismiss
 14 this action without prejudice.

15 **Governing Legal Standards**

16 Local Rule 110, corresponding with Federal Rule of Civil Procedure 11, provides that
 17 "[f]ailure of counsel or of a party to comply with these Rules or with any order of the Court may
 18 be grounds for imposition by the Court of any and all sanctions . . . within the inherent power of
 19 the Court." E.D. Cal. Local Rule 110. The Court has the inherent power to control its docket and
 20 may, in the exercise of that power, impose sanctions where appropriate, including dismissal of the
 21 action. *Bautista v. Los Angeles County*, 216 F.3d 837, 841 (9th Cir. 2000). A court may dismiss
 22 an action based on a party's failure to prosecute an action, obey a court order, or comply with
 23 local rules. *See, e.g., Ferdik v. Bonzelet*, 963 F.2d 1258, 1260-61 (9th Cir. 1992) (dismissal for
 24 failure to comply with a court order to amend a complaint); *Malone v. U.S. Postal Service*, 833
 25 F.2d 128, 130-31 (9th Cir. 1987) (dismissal for failure to comply with a court order); *Henderson*
 26 *v. Duncan*, 779 F.2d 1421, 1424 (9th Cir. 1986) (dismissal for failure to prosecute and to comply
 27 with local rules).

28 "In determining whether to dismiss an action for lack of prosecution, the district court is

required to weigh several factors: (1) the public’s interest in expeditious resolution of litigation; (2) the court’s need to manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring disposition of cases on their merits; and (5) the availability of less drastic sanctions.” *Carey v. King*, 856 F.2d 1439, 1440-41 (9th Cir. 1988) (internal quotation marks & citation omitted). These factors guide a court in deciding what to do and are not conditions that must be met in order for a court to take action. *In re Phenylpropanolamine (PPA) Products Liability Litigation*, 460 F.3d 1217, 1226 (9th Cir. 2006) (citation omitted).

Discussion

Here, Plaintiff has failed to comply with the Court’s orders. Plaintiff has filed no response to the Court’s order to show cause, and the time to do so has passed. There are no other reasonable alternatives available to address Plaintiff’s failure to respond and otherwise obey this Court’s orders. Thus, the first and second factors—the expeditious resolution of litigation and the Court’s need to manage its docket—weigh in favor of dismissal. *Carey*, 856 F.2d at 1440.

The third factor, risk of prejudice to Defendants, also weighs fairly in favor of dismissal since a presumption of injury arises from the occurrence of unreasonable delay in prosecuting an action. *See Anderson v. Air W.*, 542 F.2d 522, 524 (9th Cir. 1976). This matter cannot proceed further without Plaintiff’s participation to inform the Court why it should not decline to exercise supplemental jurisdiction over Plaintiff’s Unruh Act claim in light of *Vo v. Choi*, and, thus, the presumption of injury holds given Plaintiff’s unreasonable delay in prosecuting this action. Thus, the third factor—a risk of prejudice to the Defendants—also weighs in favor of dismissal. *Carey*, 856 F.2d at 1440.

The fourth factor usually weighs against dismissal because public policy favors disposition on the merits. *Pagtalunan v. Galaza*, 291 F.3d 639, 643 (9th Cir. 2002). However, “this factor lends little support to a party whose responsibility it is to move a case toward disposition on the merits but whose conduct impedes progress in that direction.” *In re PPA*, 460 F.3d at 1228. Plaintiff has not moved this case forward toward disposition on the merits. He has instead failed to comply with this Court’s orders, the Federal Rules of Civil Procedure, and the Local Rules, and is thus impeding the progress of this action. Therefore, the fourth factor — the

1 public policy favoring disposition of cases on their merits — also weighs in favor of dismissal.
2 *Carey*, 856 F.2d at 1440.

3 Finally, the Court’s warning to a party that failure to obey the court’s order will result in
4 dismissal satisfies the “considerations of the alternatives” requirement. *Ferdik*, 963 F.2d at 1262.
5 Here, the Court’s order to show cause, requiring a response from Plaintiff, cautioned: “the failure
6 to respond may result in a recommendation to dismiss of the entire action without prejudice.”
7 (Doc. 6 at 3) (citing Fed. R. Civ. P. 41(b) (stating that dismissal is warranted “[i]f the plaintiff
8 fails to ... comply with ... a court order.”); see *Hells Canyon Pres. Council v. U.S. Forest Serv.*,
9 403 F.3d 683, 689 (9th Cir. 2005)). Plaintiff was adequately forewarned that the failure to timely
10 respond to the show cause order could result in terminating sanctions.

11 Accordingly, because Plaintiff has failed to comply with this Court’s Local Rules and the
12 Court’s orders, and in so doing is failing to prosecute his case, the undersigned will recommend
13 dismissal of this action.

14 **Conclusion and Recommendation**

15 Accordingly, the Clerk of the Court is DIRECTED to randomly assign a District Judge to
16 this case.

17 For the reasons given above, IT IS RECOMMENDED as follows:

- 18 1. The Court DISMISS this action without prejudice for Plaintiff’s failure to prosecute this
19 action and to comply with the Court’s order. E.D. Cal. Local Rule 110.
- 20 2. The Clerk of the Court is DIRECTED to close this case.

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1 These findings and recommendations will be submitted to the United States District
2 Judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within
3 fourteen (14) days after being served with these findings and recommendations, Plaintiff may file
4 written objections with the Court. The document should be captioned “Objections to Magistrate
5 Judge’s Findings and Recommendations.” Plaintiff is advised that failure to file objections within
6 the specified time may result in the waiver of rights on appeal. *Wilkerson v. Wheeler*, 772 F.3d
7 834, 838-39 (9th Cir. 2014) (citing *Baxter v. Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991)).

8 IT IS SO ORDERED.

9 Dated: **December 17, 2024**


UNITED STATES MAGISTRATE JUDGE